



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES  
WATER COUNCIL

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STATE OF NEW HAMPSHIRE  
WATER COUNCIL

**Decision & Order**

**Docket No. 03-19 WC**

Appeal of Pennichuck Brook Watershed Council  
In Re: Site Specific Permit No. WPS-6467

***Motion for Rehearing***

**Background**

By letter dated June 13, 2003 the Pennechuck Brook Watershed Council ("PBWC") requested the Department of Environmental Services, Subsurface Systems Bureau ("DES") reconsider the issuance of all septic system and other permits related to the proposed Summerfield Condominium development in Amherst, NH ("the Project"). Based on procedural guidelines provided by DES, on July 14, 2003, the PBWC filed a Motion for Reconsideration with DES pursuant to RSA 485-A:40, I and II.

On November 5, 2003 DES issued a decision on Reconsideration ("the Decision") relative to the Motion for Reconsideration. By its decision, DES denied reconsideration of the issuance of the Site Specific Permit. In the decision DES informed PBWC that pursuant to RSA 21-O:7, IV and Env-WC 203.02, the PBWC shall have 30 days from the date of the decision to appeal the affirmation of Site Specific Permit #WPS-6467 to the Water Council. By its decision, DES also denied reconsideration of the issuance of subdivision and sewage disposal system approvals. In the decision DES informed PBWC that pursuant to RSA 485-A:40, IV, the PBWC shall have 30 days from the date of the decision to appeal the affirmation of the subdivision and septic system approvals by petition to the Superior Court.

On December 8, 2003, Dr. Allan Fuller filed, on behalf of PBWC, a Motion to Waive Administrative Rules (“Motion to Waive”) and a Notice of Appeal (“the Notice”) with the NH Water Council (“the Council”). The notice was appealing the DES affirmation of the November 5, 2003 decision. The notice was not only appealing that portion of the DES decision relative to Site Specific Permit No. WPS-6467, but also DES Subdivision Approval #SA2003004123 and DES Subsurface Sewage Disposal Septic System Approvals #CA2003052543.

On December 11, 2003 the Council issued a written Decision & Order denying The PBWC Motion to Waive Administrative Rules and Summarily Dismissing the Notice of Appeal. In its Decision & Order the Council concluded that the DES decision was clear with regards to the appeals procedure available to PBWC relative to the issuance of Site Specific Permit No. WPS-6467 and DES Subdivision Approval #SA2003004123 and DES Subsurface Sewage Disposal Septic System Approvals #CA2003052543. The Council concluded that the DES notice clearly stated that pursuant to RSA 21-O:7, IV and Env-WC 203.02, the **PBWC shall have 30 days from the date of the decision to appeal the affirmation of Site Specific Permit #WPS-6467 to the Water Council.** The Council concluded that the DES notice clearly stated that that pursuant to RSA 485-A:40. IV, the **PBWC shall have 30 days from the date of the decision to appeal the affirmation of the subdivision and septic system approvals by petition to the Superior Court.** The Council concluded that by filing a Notice of Appeal with the Council on December 8, 2003 PBWC did not comply with the 30 day filing requirement as specified by Council Rule Env-WC 203.02.

Pursuant to Env-WC 203.29(a), any person whose rights might be directly affected by the Council decision may file a motion for rehearing within 30 days of the date of the decision.

On January 8, 2004 the PBWC filed a Motion for Rehearing with the Council. The PBWC argued that its “Petition [was] filed within the thirty-day requirement.”

On February 11, 2004, at its regular Council Meeting, the Council considered the PBWC Motion for Rehearing.

**Discussion/Conclusion**

The Council concludes that the PBWC failed to meet its burden of proving, by a preponderance of the evidence, that the Council's December 11, 2003 Decision & Order to Summarily Dismiss the appeal was in error and should be reversed.

**Order**

Motion for Rehearing is **DENIED**

**Reconsideration**

Pursuant to RSA 541:6, within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the Supreme Court.

So Ordered for the Council by: \_\_\_\_\_

**COPY**

Michael Schafani, Appeals Clerk

February 17, 2004